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[Ezell v. Tennessee Valley Authority, 95-ERA-39 \(ARB June 26, 1996\)](#)

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In the Matter of

CAROLYN D. EZELL,

ARB CASE NO. 96-142

COMPLAINANT,

ALJ CASE NO. 95-ERA-39

v.

DATE: June 26, 1996

TENNESSEE VALLEY AUTHORITY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD[1]

ORDER

This case arises under the employee protection provision of the Energy Reorganization Act (ERA), 42 U.S.C. § 5851 (1988). The parties have requested dismissal of the complaint with prejudice and submitted a Memorandum of Understanding and Agreement in support of such request.

Since the request for approval of the settlement is based on an agreement entered into by the parties, the Board must review it to determine whether the terms are a fair, adequate and reasonable settlement of the complaint. 42 U.S.C. § 5851(b)(2)(A) (1988). *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

Paragraph 1 of the Agreement indicates that Respondent will pay a specified amount to Complainant and her attorney, characterizing the sum as payment for compensatory damages, attorneys' fees and litigation expenses. There is no indication as to the actual amount of money to be paid to the Complainant pursuant to the proposed settlement. **The Board has established policy that it must know the amount Complainant will receive in order to determine if the settlement agreement is fair, adequate and reasonable.** See *Robert O. Klock v. TVA and United Energy Services Corp.*, Sec. Order, Apr. 30, 1996.

This amount affects not only the Complainant's individual interest, but impacts on the public interest as well, because if the amount is not fair, adequate and reasonable, other employees may be discouraged from reporting safety violations. See *Plumlee*

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*v. Aleyeska Pipeline Service Co.*, 92-TSC-7, Sec. Dec. and Order, Aug. 6, 1993, slip op. at 5.

The parties are required to file a joint response to this Order within ten (10) days. If the parties cannot agree upon a joint response, Complainant's counsel is to submit the required information within ten (10) days from the issuance of this Order.

Respondent may then submit a response within fifteen (15) days of the issuance of this Order.

SO ORDERED.

For the Administrative Review Board

GERALD F. KRIZAN, Esq.  
Executive Director

[ENDNOTES]

[1] On April 17, 1996, Secretary's Order 2-96 was signed delegating jurisdiction to issue final agency decisions under the environmental whistleblower statutes and the regulations at 29 C.F.R. Part 24, to the newly created Administrative Review Board. 61 Fed. Reg. 19978 (May 3, 1996) (copy attached).

Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order and regulations under which the Board now issues final agency decisions. A copy of the final procedural revisions to the regulations (61 Fed. Reg. 19982), implementing this reorganization is also attached.